RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

CHARITABLE CORPORATIONS — DISSOLUTION — REVERTER OF REALTY. — On the dissolution of a charitable corporation having no debts and no stockholders, the title to its land reverts to the original owner and does not escheat to the State. *Mott et al.* v. *Danville Seminary et al.*, 21 N. E. Rep. 927 (Ill.).

COMMON CARRIERS — CONTRACT RESTRICTING LIABILITY FOR NEGLIGENCE. — An express stipulation by any common carrier for hire, that he shall be exempt from liability for losses caused by the negligence of himself or his servants, is unreasonable and contrary to public policy, and consequently void. *Liverpool & G. W. Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397, 9 Sup. Ct. Rep. 469.

This case is interesting in that it reaffirms the doctrine of *Railroad Co.* v. *Lockwood*, 17 Wall. 357, and holds that it is applicable to all public carriers alike, —to those by sea as well as to those by land.

COMMON CARRIERS — REGULATIONS — QUESTION OF LAW. — The reasonableness of a rule prescribed by a railroad company for the government of its business is purely a question of law, to be decided by the court, and not a question of fact, to be passed upon by juries. *South Fla. R. Co.* v. *Rhoads*, 5 So. Rep. 633 (Fla.).

CONTRACTS — PUBLIC POLICY — HUSBAND AND WIFE. — An executory contract of a wife to support her husband, in consideration of a conveyance made by him to her, is contrary to public policy, and void. *Corcoran* v. *Corcoran*, 21 N. E. Rep. 468 (Ind.).

CONSTITUTIONAL LAW — CHINESE EXCLUSION ACT — TREATY RIGHTS. — Appellant on leaving the United States received a certificate, which, under the law as it then was, entitled him to return. The law was changed by the Exclusion Act of Oct. 1, 1888, in accordance with the provisions of which he was, on his return, refused permission to land. A writ of *habeas corpus* was sued out on the ground that the Exclusion Act was unconstitutional. *Held*, that it was a constitutional exercise of the legislative power, and that so far as it conflicted with existing treaties between the United States and China it operated to that extent to abrogate them as part of the municipal law of the United States; that the certificate of identity issued to appellant under the act of May 6, 1882, conferred upon him no right to return to the United States of which he could not be deprived by a subsequent act of Congress; and that the power of the legislative department of the government to exclude aliens from the United States is an incident of sovereignty which cannot be granted away or restrained on behalf of any one. The rights and interests created by a treaty, which have become so vested that its expiration or abrogation will not destroy or impair them, are such as are connected with and lie in property capable of sale and transfer or other disposition, not such as are personal and untransferable in their nature. *Chae Chan Ping* v. *United States*, 130 U. S. 581, 9 Sup. Ct. Rep. 623.

For the decision of the same case in the Circuit Court, see *Chae Chan Ping* v. *United States*, 36 Fed. Rep. 431, digested 2 HARV. L. REV. 287.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE. — By an ordinance of the city of St. Louis, Mo., a tax of $5 per year was imposed upon every telegraph-pole used in the city. *Held*, the tax cannot be upheld. "Telegraphs being instruments of interstate commerce, and defendant's lines in the city of St. Louis being used for transmission of messages to all parts of the United States, neither the State nor the city can impose a privilege or license tax upon the defendant." *City of St. Louis* v. *Western Union Tel. Co.*, 39 Fed. Rep. 59 (Mo.).

CONSTITUTIONAL LAW — LOCAL SELF-GOVERNMENT. — Act Ind., March 19, 1889, created a board of public works and affairs for cities of 50,000 inhabitants, to be appointed by the Legislature, and gave such board exclusive control of

streets, alleys, etc., and of the construction of sewers and the supply of water and lights. *Held*, that the law is unconstitutional as infringing the right of local self-government. *State ex rel. Jameson et al.* v. *Denny, Mayor, et al.*, 21 N. E. Rep. 252 (Ind.). For a decision of a contrary tendency, see *Com.* v. *Plaisted*, 148 Mass. 375, digested 2 HARV. L. REV. 288.

CRIMINAL LAW — BIGAMY — MENS REA. — The prisoner was convicted under 24 & 25 Vict. c. 100 s. 57, of bigamy, having gone through the ceremony of marriage within seven years after she had been deserted by her husband. The jury found that, at the time of the second marriage, she, in good faith and on reasonable grounds, believed her husband to be dead. *Held*, by Lord Coleridge, C. J., Hawkins, Stephen, Carr, Day, A. L. Smith, Wills, Grantham, and Charles, JJ. (Denman, Field, and Manisty, JJ, and Pollock and Huddleston, BB., dissenting), that a *bona fide* belief, on reasonable grounds, in the death of the husband at the time of the second marriage afforded a good defence to the indictment, and that the conviction was wrong. *Reg.* v. *Tolson*, 23 Q. B. D. 168; s. c. 60 L. T. Rep. N. S. 899 (Crown Cases Reserved)

There was no argument before the court on behalf of the prosecution in this case, and the decision is, perhaps, on that account, entitled to less weight than it would otherwise deserve; but it is important, nevertheless, as showing that nine of the fourteen judges who sat considered that the *mens rea* was essential to the crime of bigamy, even under a statute the words of which seem to afford no sanction for the defence, which was here successful. For a decision substantially *contra*, see *Com.* v. *Mash*, 7 Met. 472.

CRIMINAL LAW — LIBEL — FORMER ACQUITTAL. — An acquittal for an indictment for libel, contained in a certain article published in a newspaper, is a bar to a subsequent prosecution for libel contained in the same article, although the defamatory words alleged are not the same. (McFarland, J., dissenting.) The majority of the court held that the criminal offence was the publication of the article which contained the alleged libels, and that this offence could not be split up and prosecuted in parts. The dissenting judge held that two libels might be published in the same paper, and that putting them under one headline or article made no difference. *People* v. *Stephens*, 21 Pac. Rep. 856 (Cal.).

CRIMINAL LAW — MURDER — MALICE. — The offence of murder in the first degree may be proved by the mere act of the killing and the attendant circumstances; the law will presume that the act of killing was malicious, if there are no circumstances to prevent the presumption. *State* v. *Brown*, 43 N. W. Rep. 69 (Minn.).

EVIDENCE — DECLARATIONS AGAINST INTEREST. — Where a wife, who, being thirty-nine years of age, had entered into an antenuptial agreement with her husband, he then being seventy years of age, whereby it was agreed that the wife, upon the death of her husband, should have absolutely one-seventh of all his estate in lieu of the one-third interest to which by law she would be entitled, and, also, that in case the husband should survive the wife, the same interest should, upon his death, descend to her heirs and personal representatives, wished, after the death of her husband, to show that the contract had been annulled, it was *held*, that a declaration of the deceased husband, made during his lifetime, to the effect that he had cancelled the contract was admissible as a declaration against his interest, for it was for his interest to retain the larger control of his property allowed by the contract. The provision of the contract in favor of heirs, does not negative this conclusion, for, on account of the disparity of their ages, it was probable that the wife would survive the husband. *Hosford* v. *Hosford*, 42 N. W. Rep. 1018 (Minn.).

EVIDENCE — FOREIGN LAW — PROOF. — If an expert witness called to prove foreign law states that any text-book, decision, code, or other legal document, truly represents that law, then the court may regard the legal document to which he refers not as evidence *per se*, but as part of the testimony of the witness, and may deal with it and give the same effect to it as to any other portion of the evidence of the expert. *Concha* v. *Murietta*, 60 L. T. Rep. N. S. 798 (Eng.).

EVIDENCE — JUDICIAL NOTICE. — On a complaint for keeping open a shop on Sunday for the purpose of doing business therein,— *held*, that the court will take judicial notice that tobacco and cigars sold by a tobacconist are not drugs and medicines, and may exclude the testimony of a witness who offers to testify that they are. *Com.* v. *Marzynski*, 21 N. E. Rep. 228 (Mass.).

EVIDENCE — PRIVILEGED COMMUNICATIONS. — An accomplice who confesses his connection with a crime, and goes on to the witness-stand, may be impeached by the testimony of an attorney to whom he has made communications. Though such communications are privileged, the privilege is that of the client and not that of the attorney, and the accomplice, by going on to the stand, leaves all privilege behind him. *People* v. *Gallagher*, 42 N. W. Rep. 1063 (Mich.).

FRAUD — EVIDENCE — MERCANTILE REPORTS. — "Where a merchant makes verbal statements as to his financial condition to an employe of a mercantile agency, by whom such statements are reduced to writing as a part of the same transaction, but not signed, and subsequently the merchant approves his former statements, the written statement," or the statements printed in the mercantile report, "are admissible in evidence against him." *Mooney et al.* v. *Davis et al.*, 42 N. W. Rep. 802 (Mich.).

INFANCY — VOIDABLE POWER OF SALE. — Where an infant gave to an attorney, as payment for the latter's services in defending the infant in a criminal action, a note and mortgage together with a *power of sale* — *held*, the power of sale was not void, but voidable, and subject to be defeated by the infant on payment of a just compensation for the services, within a reasonable time after his coming of age. *Askey et al.* v. *Williams*, 11 S. W. Rep. 1101 (Tex.).

INSURANCE — ASSIGNMENT OF POLICY. — If a life-insurance policy is made payable to the wife of the insured, or, if she dies in his lifetime, to her children, and she dies before the insured, the children are entitled to the proceeds, although the insured and his wife executed an assignment of the policy to another. *Appeal of Brown*, 17 Atl. Rep. 419 (Pa.).

JURY TRIAL — CHALLENGES — JUROR WITH OPINION AS TO GUILT OF ACCUSED. — A juror who says he has formed an opinion as to defendant's guilt, from what he has read in the newspapers, but also says he can render a verdict according to the evidence, uninfluenced by his previous opinion, is competent. *Rizzolo* v. *Commonwealth*, 17 Atl. Rep. 520. (Pa.)

PLEADING — LEGAL EFFECT OF FACTS — EXEMPLARY AND ACTUAL DAMAGES. — Where, in an action for personal injuries, plaintiff set out all the facts necessary, to support a verdict for actual damages, and then prayed for "$6 actual and $200 exemplary damages," — *held*, it made no difference that the sum called actual damages in the petition was so small, that, if there had been no other damages the court could not take jurisdiction of the case; since it is the legal effect of the facts set out, and not the name or effect stated by the pleader, that is important, and the jury, under the instructions of the court, were justified in finding that part or the whole of what the pleader called exemplary damages were, in fact, actual damages. *International & G. N. R. Co.* v. *Gordon*, 11 S. W. Rep. 1033 (Tex.).

PURCHASE FOR VALUE — SATISFACTION OF PRE-EXISTING DEBT. — Where a fraudulent vendee of goods transfers them to another in payment of a pre-existing debt, such pre-existing debt alone will not be a sufficient consideration to constitute a transferee a *bona-fide* purchaser for value. *Eaton* v. *Davidson*, 21 N. E. Rep. 442 (Ohio).

The court here attempts to distinguish transfer of negotiable paper from that of other property, and holds, it would seem inconsistently, that what is value in the former case is not in the latter. For a full collection of cases on the point, see Ames, Cases on Bills and Notes, Vol 1, pp. 650 and 667.

REAL PROPERTY — EASEMENTS — OBSTRUCTION OF — EQUITABLE RELIEF — When the owner of a servient tenement obstructs a right of way of which the owner of the dominant tenement has made unjustifiable use, equity will not interfere, but will leave the owner of the dominant tenement to his action in law. *McBryde et al.* v. *Sayre et al*, 5 So. Rep. 791 (Ala).

REAL PROPERTY — LIS PENDENS — EFFECT OF SUBSEQUENT APPEAL. — A purchaser in good faith at a private sale, whose title rests on a voidable decree in chancery, the purchase being made after the entry of the decree, and before a writ of error thereto is sued out, is not affected by a subsequent reversal of the decree on error. A final decree, where no appeal is taken, is a final determination of the particular suit, and subsequent proceedings by a writ of error constitute a wholly new and independent action. Therefore, in this case, the purchaser did not take title *pendente lite*. *Cheever* v. *Minton et al.*, 21 Pac. Rep. 710 (Col.).

REAL PROPERTY — RULE AGAINST PERPETUITIES — CROWN GRANTS IN COLONIES. — In 1823, in a Crown grant of land in New South Wales, there was a reservation of a right to resume such quantity thereof, not exceeding ten acres, as might be required for public purposes. *Held*, that, whether or not the Crown in England would be affected by the rule against perpetuities, such rule was, nevertheless, inapplicable in 1823 to Crown grants of lands in the colony, or to reservations, or defeasances in such grants, to take effect on some contingency more or less remote, and only when necessary for the public good. *Cooper* v. *Stuart*, 14 App. Cas. 286 (Privy Council).

The reason given for making an exception to the rule against perpetuities in this case is, that in the early days of a colony it is impossible to foresee what land will ultimately be required for public uses; that some such reservation as was here employed is the only feasible way of protecting the future needs of the colony; and that a rule which rests upon considerations of public policy could not be said to be reasonably applied where its application would prevent such protection.

REAL PROPERTY — RULE AGAINST PERPETUITIES — POWER OF APPOINTMENT BY WILLS. — A was a *cestui que trust* for life, with a general power of appointment by will. She appointed by will two of her children for their lives, with remainders over. *Held*, that, as the power of appointment was by will only, the gift under it must be construed as of the time of the creation of the power, and not as of the time of its exercise. So considered, the gift, being an infringement of the law against perpetuities, is invalid. *Genet et al.* v. *Hunt et al.*, 21 N. E. Rep. 91 (N. Y.).

The Court here distinguished sharply between a general power of appointment by will and one by deed or will. In the latter case, the donor of the power is in effect the absolute owner of the property, as he can at any time appoint to himself. His appointment, then, is really a gift from himself to the appointee, and should be construed as of the time it is made. The donee of a general power of appointment by will is in no sense the absolute owner of the property, and there is, therefore, no reason for construing the gift under such a power as of the time of the exercise instead of the time of the creation of the power. The decision is in line with that of James, V. C., in *In re Powell's Trusts*, 39 L. J. Ch. 188, and opposed to the later decisions of *Rous* v. *Jackson*, L. R. 29 Ch. D. 521, and *In re Flower*, 34 Wk. Rep. 149, in which the above distinction was not taken. See also Gray, Rule against Perpetuities, § 526, approving of the rule here adopted.

TELEGRAPH COMPANIES — RIGHTS OF RECEIVER OF A MESSAGE — REASONABLE REGULATION. — One to whom a telegram is sent may maintain an action against the telegraph company for its negligence in delivering the same. A telegraph company cannot stipulate that it shall not be liable for negligence in delivering a message unless a claim therefor in writing is presented within sixty days from the receipt of the message. This is not a reasonable business regulation, but a species of private statute of limitation. *W. U. Tel. Co.* v. *Longwill*, 21 Pac. Rep. 339 (N. M.).

TENANTS IN COMMON — SATISFACTION OF LIEN — CONTRIBUTION. — Where one tenant in common pays off a lien against the joint property, he is entitled to contribution from the other tenants to the extent of their respective interests, and a court of equity to secure such contribution will enforce upon the interests of the other tenants an equitable lien of the same character as that which has been removed. *Moon et al.* v. *Jennings et al.*, 20 N. E. Rep. 749 (Ind.).

WILLS — IMPERFECT DESIGNATION — EVIDENCE OF INTENTION. — A will bequeathed a sum to the "Nursery," without other designation. There was no corporation with that name, but there was one which was originally incorporated as the "Providence Nursery," and after seven years changed its name to the "R. I. C. Hospital and Nursery of P.," and subsequently consolidated with an orphanage, which was commonly called the "Nursery," and to which the testator had contributed. The orphanage maintained the "Nursery" in connection with its other work. *Held*, the claim of the orphanage is superior to that of another institution never popularly known as a nursery, though called by the testator the "Nigger Nursery;" and evidence that the testator, after making his will, said he had given a legacy to this latter institution, and when told that he had erroneously called it "Nursery," he replied that he did not wish to erase anything from the will, and that he meant the "Nigger Nursery," is inadmissible. *Wood et al.* v. *Hammond et al.*, 17 Atl. Rep. 324 (R. I.)